

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(THE DISTRICT REGISTRY OF BUKOBA)
AT BUKOBA**

MISC. LAND APPLICATION NO. 77 OF 2022

*(Arising from Misc. Land Application No. 32 of 2022 & No. 95 of 2021 of the High Court of Bukoba,
Misc. Land Appeal No. 31 of 2020 of the High Court at Bukoba, Appeal No. 17 of 2018 of the District
Land and Housing Tribunal for Kagera at Bukoba. Originating from Katerero Ward Tribunal Civil Case
No. 15 of 2017)*

IDRISA OMARY APPLICANT

VERSUS

HABIBU YUSUPH RESPONDENT

RULING

23rd February & 24th March, 2023

OTARU, J.:

The Applicant IDRISA OMARY, filed an Application under Sections 5(1)(c) and 11(1) of the **Appellate Jurisdiction Act** (Cap. 141) seeking for Extension of Time *to apply for Certifying that there is a point of law involved in the Appeal and worth to be determined by the Court of Appeal*. In response to the Application, counsel for HABIBU YUSUPH, the Respondent herein raised a preliminary objection that the court has no jurisdiction to hear the Application. This is the Ruling in respect of the Preliminary Objection.

On the date set for hearing of the preliminary objection, both parties had legal representation. The Applicant enjoyed the services of Mr. Victor Blasio, learned Advocate while the Respondent was represented by learned Advocate Mr. Joseph Rugambwa. Counsel for the Respondent argued that the Applicant

had filed a similar application in the High Court through Application No. 32 of 2022 which was dismissed on 24th June 2022 for being filed out of time. That the dismissal order had an effect of concluding the Application basing on time limitation. Relying on the case of **Hashim Madongo and Two Others v. Minister for Industry and Two Others, Civil Appeal No. 27 of 2003** (CAT Dsm) (unreported) and **MM Worldwide Trading Co. & 2 Others v NBC**, Civil Appeal No. 258 of 2017 (CAT Dsm) (unreported) counsel argued that the Applicant had no room to seek for extension through the back door as the same should have been sought prior to the initial dismissal of the Application. Therefore, counsel prayed for dismissal of the Application with costs.

On his part counsel for the Applicant agreed that the previous Application had been dismissed for being filed out of time. He however argued that since the matter was not heard on merits they are not barred from refiling the same after rectifying the error. They are thus seeking for rectification of the error. In support of his argument, counsel invited this court to depart from the decision of the Court of Appeal cited by the Respondent's counsel as did the court in the case of **Editha Nababi v. Kemebos English Medium Boarding Primary School**, Misc. Labour Application No. 8 of 2020 (HC – Bukoba, Labour Division).

After hearing the rival submissions by the parties and consulting the relevant legislation as well as the case law, I asked myself the following question: *whether the Applicant can seek for extension of time after the Application was dismissed*. In other words, once the matter is dismissed, can

extension of time be sought to rectify the previous error in the same tribunal/court? The case of **Hashim Madongo** (supra) cited by the Respondent, is relevant. In that case the Court of Appeal held that:-

'It is not open for a party to go back to the same court and seek for extension of time'.

In the matter at hand, the previous Application was dismissed for being filed out of time. The relevant case concerning dismissal for time barred matters is that of **Ali Shabani & Others vs Tanzania National Roads Agency (TANROADS) & Another** (Civil Appeal 261 of 2020) (CAT Tanga) (unreported), where the Court of Appeal held that '*As the suit was **time barred**, the **only order** was to **dismiss it** under Section 3(1) of the **Law of Limitation Act***'. As such, proceedings for want of time limitation are barred under Section 3(1) of the **Law of Limitation Act** [Cap. 89 R.E. 2019]. Consequence of dismissal order is found in the cases of **MM World Wide Trading Company Limited** (supra) and **Hashim Madongo** (supra) that the same is as good as heard on merits. However, the Applicant is inviting this court to take the steps taken by this court in the case of **Editha Nababi** (supra) and depart from the decisions of the higher court cited. I appreciate the invitation. I have considered the same as well as circumstances giving rise to the reasoning of my learned brother Mtulya J. This decision is a High Court decision which is not binding on this court. With all due respect and without going to the details thereof, I do not think I need to take that direction. Thus, the binding position

remains that the Applicant was supposed to bring an application for extension of time prior to dismissal of Application No. 32 of 2022 and not after its dismissal. As a result, the issue *whether the Applicant can seek for extension of time after the Application was dismissed*, is answered in the negative.

Consequently, as the preliminary objection raised by the counsel for the Respondent has merits, the same is sustained and the Application is dismissed with costs.

It is so ordered.

DATED at **BUKOBA** this 24th day of March, 2023.



M. P. Otaru

JUDGE

Court: Ruling delivered in court in the presence of the Applicant and the Respondent in person as well as Mr. Gerase Reuben, learned Advocate for the Respondent.

The right of appeal is duly explained.



M.P. Otaru

Judge

24/03/2023